

BAY DELTA CONSERVATION PLAN (BDCP)

WHAT IS THE BDCP AND WHO IS INVOLVED?

- The BDCP calls for the construction of twin tunnels 35-miles long that would draw water directly from the Sacramento River and deliver it to the existing pumping facilities in the South Delta. The BDCP is a proposed Habitat Conservation Plan (“HCP”) to support a 50-year Incidental Take Permit under the federal Endangered Species Act, and a Natural Communities Conservation Plan under the CA Endangered Species Act.
 - Currently, freshwater is drawn from the Sacramento River in the North Delta and moved southward through a complex maze of channels to huge federal and State pumping plants located in the South Delta. The quality of this water can be degraded along the way due to salinity intrusion from the Bay, inputs from agricultural and municipal discharges, etc. Millions of eggs and larvae of native and introduced fishes can be entrained in the pumping facilities. Also, the 1,100 mile levee system comprising backbone of Delta infrastructure make the State water supply vulnerable because the levees could collapse in the event of an earthquake or flood.
- A joint DEIS/DEIR regarding the BDCP, issued under NEPA/CEQA, is currently out for public review; comments were due April 14; we understand the lead agencies will soon announce a 30-day extension.
- The lead federal agencies are FWS, NMFS, and BOR; the State lead is California Department of Water Resources (“DWR”). The HCP and the EIS/EIR are funded by the water exporters (the “applicants”) and are being prepared by consultants directed primarily by DWR.
- The tunnels, along with various undefined restoration projects, are proposed as “conservation measures” to meet the dual goals of restoring the Bay/Delta ecosystem and ensuring a more reliable water supply for the water user communities.

KEY CONCERNS

- **Operation of the proposed tunnels would likely contribute to the degradation of waters already listed as impaired under the CWA and the decline of endangered species that the project is intended to restore.** The modeled operations of the proposed new intakes assume continuation of the current water allocations, which are already resulting in poor water quality and contributing to the decline of species. Continuation of such status quo operations would be unrealistic given climate change scenarios, “take limits” for listed fishes, drought, limitations on future reservoir operations, and potential inequities regarding upstream water rights.
- **Critical information that the action agencies need in order to issue permits is lacking.** Although described as a project-level DEIS for the tunnel construction, and as a programmatic DEIS for everything else, the document lacks project-level analysis, e.g., engineering designs for the tunnels; clarity regarding operations; analysis of impacts to covered fish species; funding for restoration activities; and mitigation for drinking water impacts.
- **Impacts.** Every alternative analyzed in the DEIS would adversely affect water quality and endangered species. The DEIS itself acknowledges that at least some of the alternatives would have unacceptable adverse impacts to water quality, beneficial uses, and endangered species. No preferred NEPA alternative is identified (although one is identified for CEQA); therefore, EPA must rate all alternatives.

INTERAGENCY EFFORTS

- CEQ has been convening involved Agencies at the Deputy Secretary level for a series of meetings over the past year. All Agencies, including the lead Agencies, raised significant concerns regarding the Administrative draft of the EIS released this summer:

- **NMFS:** “The lack of analysis of upstream operations and related effects may render this document insufficient to provide NEPA compliance for the full suite of actions necessary to integrate the BDCP into CVP operations”. . . “Though the Federal agencies have had significant input into the EA (effects analysis), it is still a consultant drafted document guided by the permit applicants with several unresolved issues related to the analytical methods and resultant conclusions regarding project effects on covered species. The Federal agencies have responsibility for the content of the EIS as we (NMFS) are a co-lead and therefore must fully support the methodology and conclusions reached in the document. The EA is not a Federal agency document, it is still under review, and we have not accepted all of its methodology and conclusions.”
- **FWS:** “The FWS believes that the draft BDCP ADEIS is insufficient at this time as a disclosure document and is not yet adequate in providing all information and analyses necessary for a decision-maker to make an informed choice between alternatives”. . . “The ADEIS is missing a clear, full and complete project description of the proposed action and detailed information needed to do a complete project specific level impact analysis for CM1. Additionally, the ADEIS does not provide an equal level of analysis of all alternatives”.
- **BOR:** “The identification of adverse and beneficial impacts is very subjective and appears to be based on a misreading of NEPA regulations”. . . “Analysis of upstream affects may not be sufficient to serve as NEPA compliance for Reclamation to accept BiOp depending on the outcome of pending 9th circuit appeal filed by NRDC specific to NEPA analysis of RPA prior to implementation by Action Agency”.
- **Corps:** The Corps has indicated that the level of detail in the current documents is not sufficient to support a CWA 404 permit determination nor a Section 408 Letter of Permission for necessary Corps levee modifications.
- The Deputies group met again last week, following a high-level meeting between the lead Agencies, State of California, and project applicants.
 - State of California and project applicants reiterated their strong desire to move the project forward quickly and expressed their concerns over federal commitment to make this happen.
 - DOI/Commerce committed to form a high level task force to work through the major issues over the next few months.
 - EPA should participate on this group to help ensure our concerns are vetted, including potentially looking at another alternative (“the portfolio approach”).